

Forms in which foreign businesses can operate in Germany: a comparison between permanent establishments, branches & subsidiaries

	Permanent establishment		Subsidiary (corporate enterprise)
	Dependent permanent establishment	Branch*	
Tasks	Counts as a subordinate unit of the foreign company.	Doing significant transactions covered by the head company's business object, not merely preliminary or auxiliary tasks.	Does independent business operations of its own.
Management	Not usually separate.	Has its own business assets, its own bank account, and keeps separate accounts.	Has its own business assets, its own bank account, and keeps separate accounts.
Dependence in organisational terms on the head company / parent company	Dependent in organisational terms, may not do business independently of the head company.	Does business independently.	Independent (only dependent on the parent company under legislation on group consolidation).
Dependence in legal terms on the head company / parent company	Has no legal capacity of its own.	Dependent in civil law terms, has no legal personality of its own. Legal transactions done by the branch obligate the foreign company.	Entirely independent.
Entry in the register of companies	No registration necessary.	Has to be registered in the branch's local government area. Particulars having to be provided depend on the legal structure of the foreign head company (Commercial Code, sect. 13d).	Has to be registered because it is a legal entity in its own right.
Registration according to Industrial Code (Gewerbeordnung)	Registration necessary.	Registration necessary.	Registration necessary.
Trade name	Has no separate trade name.	May have its own name, but it must include the head company's trade name (including	Has to have its own trade name because it is a legal entity in its own

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		suffix indicating the legal structure).	right.
Representation	Only by the foreign head company's managerial agents authorised to do so.	Manager authorised to represent the company and to do legal transactions; full or limited commercial powers may be granted.	By its own managerial agents authorised to do so.
Liability of the head company / parent company	Head company assumes unlimited liability for the permanent establishment.	Head company assumes unlimited liability for the branch.	Subsidiary is liable for its own actions.
Publication of annual accounts	No.	Yes, if head company is based in an EU member state or a country belonging to the EEA. Scope: Commercial Code, sect. 325a.	Yes. Scope: Commercial Code, sect. 325.
Accounting obligations	Under commercial law: none. Under tax law: on exceeding certain turnover / profit limits, if so demanded by the tax office (Fiscal Code, sect. 141).	Under commercial law: yes. Under tax law: yes.	Under commercial law: yes. Under tax law: yes.
Tax liability	Running a permanent establishment in Germany may mean that the foreign company has limited corporation tax and trade tax liability.	Running a branch in Germany means that the foreign company has limited corporation tax and trade tax liability.	Has unlimited corporation tax and trade tax liability.
Calculation / allocation of income	If limited tax liability applies, only those profits are taxable in Germany which may be allocated to the permanent establishment. Profits are	Only those profits are taxable in Germany which may be allocated to the branch. Profits are determined using the arm's length	Direct allocation of assets and profits.

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	determined using the arm's length principle.	principle.	
Tax on dividend earnings	<p>If limited tax liability applies: Dividends received are tax-free (just 5 % of gross dividends are added as non-deductible operating expenses to the profits made in Germany).</p> <p>Capital yield tax is deducted at source when dividends are distributed, but it has no discharging effect and is counted in full towards the German tax debt.</p>	<p>Dividends received are tax-free (just 5 % of gross dividends are added as non-deductible operating expenses to the profits made in Germany).</p> <p>Capital yield tax is deducted at source when dividends are distributed, but it has no discharging effect and is counted in full towards the German tax debt.</p>	<p>Dividends received are tax-free (just 5 % of gross dividends are added as non-deductible operating expenses to the profits made in Germany).</p> <p>Capital yield tax is deducted at source when dividends are distributed, but it has no discharging effect and is counted in full towards the German tax debt.</p>
Tax on transferred profits	<p>If limited tax liability applies:</p> <p>Results transferred from the permanent establishment to the head company are not taxed.</p>	Results transferred from the branch to the head company are not taxed.	<p>Capital yield tax is deducted at source on dividends paid to the parent company.</p> <p>Exemption only possible under a DTA or Income Tax Law, sect. 43b.</p>
Integrated fiscal unit	Cannot function as a controlling company because it is an integral part of the foreign company.	May function as a controlling company, but it must then be distinguishable from the head company.	May function as a controlling company because it has unlimited tax liability in Germany.

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